



May 21, 2002

Ms. Phyllis Sockwell
City Secretary
City of Mont Belvieu
P.O. Box 1048
Mont Belvieu, Texas 77580

OR2002-2735

Dear Ms. Sockwell:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 163235.

The City of Mont Belvieu (the "city") received a request for:

- 1) Copy of contract between Strong Sports Mgt. Inc. and City of Mont Belvieu;
- 2) Number of employees at Eagle Pointe Complex, including names, salaries, and positions.

You state that the city has made available to the requestor all responsive records in its possession. However, you inform us that records relating to the employees of Eagle Pointe Complex have not been made available because the city does not have possession or control of these records. We have considered your arguments as well as those submitted by Strong Sports Management, Inc. ("Strong Sports"). See Gov't Code § 552.304 (providing that interested person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

Section 552.002 of the Government Code defines public information as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body *and the governmental body owns the information or has a right of access to it.*" (Emphasis added.) Although the Act does not ordinarily require a governmental body to obtain information not in its possession, information that is collected, assembled, or maintained by a third party may be subject to disclosure under chapter 552 of the Government Code if a

governmental body owns or has a right of access to the information. *See* Open Records Decision No. 462 (1987); *cf.* Open Records Decision No. 499 (1988) (relevant facts in determining whether information held by consultant is subject to the Act are: 1) information collected by consultant must relate to the governmental body's official business; 2) consultant must have acted as agent of the governmental body in collecting information; and 3) governmental body must have or be entitled to access to the information).

In this instance, Strong Sports advises us that it "is a privately owned corporation that has been contracted by [the city] to operate the Eagle Pointe Golf Club and Recreation Complex" and that employees of Eagle Pointe are employed by Strong Sports and not the city. Furthermore, Strong Sports asserts that it does not provide the city with a list of employees, their positions, or salaries, nor is it required to do so under the terms of its "Management Agreement" with the city. You also state that records relating to employees of Eagle Pointe Complex are not available to the city nor may this information be obtained by the city. Based upon these representations, we find that city does not own, nor has a right of access, to the responsive information pertaining to the employees of the Eagle Pointe Complex. Consequently, these records are not "public information" as defined by section 552.002 and are not subject to the Act. *See* Gov't Code §§ 552.002,.021.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor

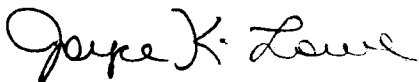
should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Joyce K. Lowe
Assistant Attorney General
Open Records Division

JKL/sdk

Ref: ID# 163235

c: Ms. Mary Green
P.O. Box 104
Mont Belvieu, Texas 77580

Mr. Jeff Strong
Strong Sports Management
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